

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

THE CITY OF CLEVER, MISSOURI)

Respondent)

Proceedings under Section 309(a)(3)
of the Clean Water Act,
33 U.S.C. § 1319(a)(3))

) Docket No. CWA-07-2008-0057

) FINDINGS OF VIOLATION
) AND ORDER FOR COMPLIANCE

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and the ORDER FOR COMPLIANCE is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. Respondent, the City of Clever, Missouri (hereafter "Respondent" or "City"), operates a Publicly Owned Treatment Works (hereafter "the POTW") in the State of Missouri that treats domestic and industrial wastewater.

3. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal National Pollutant Discharge Elimination System ("NPDES") program in Missouri pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding. The EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

II. Jurisdiction and Finding of Fact

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

5. The City of Clever is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial sources.

7. The City's POTW discharges to an unnamed tributary of Spring Creek, which thereafter flows to Spring Creek.

8. The POTW is a "point source" that "discharges pollutants" into "navigable waters" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. The City's discharge of pollutants from the POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. On or about February 8, 2002, MDNR granted NPDES permit number MO-0102318 (hereafter "NPDES permit"), to the Respondent for discharges from the POTW to Spring Creek, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit was modified on March 20, 2006, and has an expiration date of February 7, 2007. The NPDES permit has been administratively extended and a new draft permit was placed on public notice by MDNR on January 4, 2008.

11. Section A of Respondent's NPDES permit sets a monthly average final effluent limitation of 1.0 milligrams per liter ("mg/L") for Total Phosphorus ("P") and requires 85% removal efficiency for five-day Biochemical Oxygen Demand ("BOD₅") and Total Suspended Solids ("TSS").

12. Section B of Respondent's NPDES permit incorporates by reference Standard Conditions Parts I, II and III. Included within Part I of the Standard Conditions of the City's NPDES permit are the following provisions:

- a. Section A, 1. requires that samples and measurements taken as required by the NPDES permit be representative of the nature and volume, respectively, of the monitored discharge.
- b. Section A, 4. requires that test procedures for the analysis of pollutants shall be in accordance with Missouri Clean Water Commission Effluent Regulations 10 CSR 20-7.015, which requires samples to be maintained at 4°C.
- c. Section A, 5.a. requires the permittee to maintain a record of the date, exact place and time of sampling or measurements, the individual(s) who performed the sampling measurements, the date(s) analyses was performed; the individual(s) who performed the analyses, the analytical techniques or methods used; and the results of such analyses.
- d. Section B, 3. requires the permittee to operate and maintain the POTW facilities to comply with the Missouri Clean Water Law and applicable permit conditions, and

further requires the permittee to be able to demonstrate that wastewater treatment equipment and facilities are effectively operated and maintained by competent personnel.

13. Section C of Respondent's NPDES permit identifies Special Conditions that are applicable to the City, including Section C, 2., which requires all outfalls to be clearly marked in the field.

14. On July 30 through August 2, 2007, the EPA performed an inspection (hereafter "the EPA Inspection") of the City wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the City's compliance with its NPDES permit and the CWA.

15. During the Inspection, EPA's inspector made observations and documented his findings regarding the City's compliance with effluent limitations and conditions, as follows:

- a. Based on data that the City reported on its discharge monitoring reports ("DMRs") for July 12 and October 8, 2007, the City exceeded the POTW's effluent limitation for Total Phosphorus.

16. During the Inspection, EPA's inspector made observations and documented his findings regarding the City's compliance with effluent sampling, analysis, reporting and recordkeeping requirements, as follows:

- a. The City did not follow Standard Method 5210 B for testing BOD₅ as required by 40 CFR 136.3;
- b. The City did not collect composite influent samples for the purpose of measuring BOD₅ and TSS, therefore the City did not collect representative influent samples to compare to the composite effluent samples for purposes of determining the POTW's monthly percent removal efficiency;
- c. The City did not cool composite samples to 4°C during periods of collection; and
- d. The City did not keep a record for the analytical technique or method used to test pH.

17. During the Inspection, EPA's inspector made observations and documented his findings for the City's wastewater treatment processes, its operation and maintenance, and the discharge point, as follows:

- a. The east plant was in poor condition and unable to be used, without significant repairs, for wastewater treatment; and
- b. Outfall 001 was unmarked.

IV. Findings of Violation

18. The facts stated in aforementioned Paragraphs 4 through 17 are herein incorporated.
19. Respondent violated Section A of the NPDES permit by failing to meet the Total Phosphorus as P final effluent limitation on July 12 and October 8, 2007.
20. Respondent violated Section B, Part I, Subsection A.1.a by failing to collect a representative sample of the POTW's influent for the purpose of testing percent removal efficiency.
21. Respondent violated 40 CFR § 136.3 and Section B, Part I, Subsection A.4 of the NPDES permit by failing to cool samples to 4°C during collection and failing to follow the BOD₅ method 5210 B as required by EPA's *Standard Methods for Examination of Water and Wastewater*.
22. Respondent violated Section B, Part I, Subsections B.3 of the NPDES permit by failing to operate and maintain the POTW facilities.
23. Respondent violated Section C.2 of the NPDES permit by failing to clearly mark Outfall 001.
24. Respondent's violations of the terms and conditions of its NPDES permit, as described in Paragraphs 18 through 23, above, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations.

V. Order for Compliance

Based on the Findings of Fact and Findings of Violation previously set forth, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below:

25. *Sampling, Analysis, Recordkeeping, and Reporting.* The City shall comply with all sampling, analysis, recordkeeping and reporting requirements of its NPDES permit, including but not limited to the following:
 - a. Beginning immediately upon receipt of this Order, properly conduct representative sampling and analysis for all parameters specified in the NPDES permit, including but not limited to, collection of composite samples for BOD₅ and TSS in accordance with Section A of the City's NPDES permit;
 - b. Beginning immediately upon receipt of this Order, record all data required to be documented when sampling and analyzing samples, including but not limited to date, time and exact place of sampling or measurement, the individual(s) who performed the sampling measurement, the individual(s) who performed the

analyses, and the analytical techniques or methods used for all samples, in accordance with Part I, Section A, 5.a. of the City's NPDES permit; and

- c. Provide discharge monitoring reports each month for the next twelve months to ensure that the phosphorus limits set forth by the new operating permit will be met. If the facility is unable to meet the limit of 0.5 mg/L, then provide procedures within thirty (30) days of receipt of the Order that will be implemented to ensure that the limits will be met. The procedure shall include a schedule to come into compliance as soon as practicable, but no later than six (6) months of receipt of the Order.

26. *POTW Operation and Maintenance.* Within sixty (60) days of receipt of this Order, Respondent shall provide a report to EPA demonstrating that it has taken actions and instituted practices necessary to operate and maintain its POTW in a manner consistent with its NPDES permit, the CWA and its implementing regulations, and applicable state requirements. The report shall demonstrate that at least the following actions have been taken:

- a. Implementation of required sampling, analysis, recordkeeping and reporting practices, as identified in Paragraph 25 of this Order, above;
- b. Development and implementation of written procedures and policies to ensure proper operation and maintenance of the wastewater treatment plant, including but not limited to: procedures that would either provide operation and maintenance on the west treatment facility; or a professional registered engineer's statement indicating that the west treatment facility is no longer needed for the actual daily flow, providing a timeline of closure activities for the west portion of the treatment facility as required by Section B, Part III, Section I of the NPDES permit. In developing these policies and procedures, the City shall consult with qualified professionals, as well as appropriate state officials; and
- c. Provide documentation demonstrating the outfall has been clearly marked.

27. *Certification.* Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principal executive officer or a ranking elected official, or by a duly authorized representative of that person, that contain the following certification:

I also certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Submissions

28. All documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Kimberly Harbour
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

29. A copy of documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Cynthia Davies, Director
Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807-5912.

VI. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

30. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to correct the violations described above, including but not limited to actions to protect the health or welfare of persons or the environment, or to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

31. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

32. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

33. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

34. This Order shall be effective upon receipt by Respondent. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

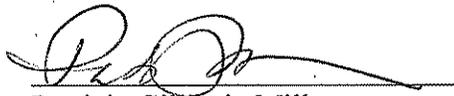
Termination

35. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 22 day of April, 2008.



William A. Spratlin, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Patricia Gillispie Miller
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

The Honorable Stan Hale, Mayor
City of Clever
P.O. Box 52
Clever, Missouri 65631;

Kevin Mohammadi, Chief
Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102; and

Cynthia Davies, Director
Southwest Regional Office
Missouri Department of Natural Resources
2040 West Woodland
Springfield, Missouri 65807.

4/22/08
Date

Kimberly Keyff